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MONTANA LEGISLATIVE HISTORY

Chapter 88 19 89

Bill H _____ S 57 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 04	✓ C	Hearing Date(s)	Jan 12	✓ C
		C		Jan 13	✓ C
		C			C
		C			C
Date Out	Mar 04	✓ C		Jan 13	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

SENATE BILL NO. 57

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE SHERIFF'S PROCEDURES IN CIVIL MATTERS; CHANGING THE TIME REQUIREMENTS FOR THE PAYMENT OF FEES INTO THE COUNTY TREASURY; PROVIDING AN ALTERNATIVE METHOD FOR THE RETURN OF A WRIT OF EXECUTION; MODIFYING NOTICE REQUIREMENTS FOR THE CONDUCT OF A SHERIFF'S SALE AND FOR THE ENFORCEMENT OF CERTAIN LIENS; REVISING THE LAWS RELATING TO THE IMPOUNDMENT AND SALE OF ABANDONED MOTOR VEHICLES; ALLOWING THE SHERIFF TO REQUIRE SECURITY FOR COSTS INCURRED IN THE SEIZURE OF PROPERTY UNDER AN ORDER FOR CLAIM AND DELIVERY; AMENDING SECTIONS 7-4-2511, 7-4-2512, 25-13-404, 25-13-701, 61-12-401 THROUGH 61-12-403, 61-12-407, AND 71-3-1203, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-4-2511, MCA, is amended to read:

"7-4-2511. Collection and disposal of fees. (1) Each salaried county officer must charge and collect for the use of his county and pay into the county treasury ~~on the first Monday~~ by the 10th day in each month all fees now or hereafter allowed by law, paid or chargeable in all cases, except as provided in 25-10-403. Nothing in this subsection applies to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in his custody.

(2) No salaried county officer may receive for his own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by him. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county."

Section 2. Section 7-4-2512, MCA, is amended to read:

"7-4-2512. Statement and affidavit of fees collected. (1) The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer ~~on the first Monday~~ by the 10th day of the following month and must be accompanied by a statement and copy of the fee book for the preceding month, duly verified by the officer making the payment.

(2) The affidavit must be in the following form:

State of Montana

County of ....

I, ..., of the county of ...., do swear that the fee

book in my office contains a true statement in detail of all fees and compensations of every kind and nature for official services rendered by me, paid or chargeable, or by my deputies or assistants for the month of ...., 19.., and that this fee book shows the full amount received or chargeable in said month and since my last monthly payment; and neither myself nor, to my knowledge or belief, any of my deputies or assistants have rendered any official service, except for the county or state, which is not fully set out in this fee book; and that the foregoing statement is a full, true, and correct copy thereof.

..... (Signature)

Subscribed and sworn to before me this ... day of ...., 19...

Seal ..... (Person authorized to take oaths)

..... (Title or notarial information)"

Section 3. Section 25-13-404, MCA, is amended to read:

"25-13-404. Return of the execution. (1) Except as provided in ~~subsection~~ subsections (2) and (3), execution may be made returnable to the clerk of the court in which the judgment was rendered, at any time not less than 10 or more than 60 days after ~~its~~ receipt of the recovery by the sheriff following imposition of levy, ~~to the clerk of the court in which the judgment was rendered~~ as provided in 25-13-402.

(2) The writ of execution issued by the county treasurer under 15-16-401 may be made returnable, at any time not less than 10 or more than 90 days after its receipt by the sheriff, to the county treasurer of the county in which the writ was issued.

(3) In compliance with the provisions of subsection (1) and in lieu of returning the writ of execution to the clerk of the court, the sheriff may enclose his return of the writ in an envelope to the officer, agent, or attorney who sent it and deposit it in the post office, prepaying the postage."

Section 4. Section 25-13-701, MCA, is amended to read:

"25-13-701. Notice of sale on execution. (1) Before the sale of the property on execution, notice thereof must be given as follows:

(a) in case of perishable property, by posting written notice of the time and place of the sale in three public places of in the ~~township or city~~ county where the sale is to take place, for such time as may be reasonable considering the character and condition of the property;

(b) in case of other personal property, by posting a similar notice in three public places in the ~~township or city~~ county where the sale is to take place, for not less than 5 days or more than 10 days, and by publishing a copy of the notice at least 1 week before the sale in a newspaper

of general circulation published in the county, if there be one;

(c) in case of real property, by posting a similar notice, particularly describing the property, for 20 days in three public places ~~of~~ in the ~~township-or-city~~ county where the property is situated and also where the property is to be sold, which may be either at the courthouse or on the premises, and publishing a copy thereof once a week for the same period in some newspaper published in the county, if there be one, which notice shall be substantially as follows:

SHERIFF'S SALE

....., Plaintiff,

vs.

....., Defendant,

To be sold at sheriff's sale on the .... day of ...., 19.., at ..... (Here insert brief description of property.)

Signed ....., Sheriff

(2) Any sheriff publishing a notice not in accordance with the form set forth in subsection (1)(c) and which shall cost more than such a notice shall not be entitled to any costs for publication of the same but shall be personally liable for the payment of such publication."

Section 5. Section 61-12-401, MCA, is amended to read:

"61-12-401. Taking vehicle into custody. (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of 48 hours or more on any public highway, or for a period of 5 days or more on any city street, public property, or private property:

(a) the Montana highway patrol if the vehicle is upon the right-of-way of any public highway other than a county road;

(b) the sheriff of the county if the vehicle is upon the right-of-way of any county road within the county;

(c) the city police if the vehicle is upon a city street within the city.

(2) The Montana highway patrol, sheriff of the county, or the city police may use its or his personnel, equipment, and facilities for the removal and ~~preservation~~ storage of the vehicle, or may hire other personnel, equipment, and facilities for those purposes.

(3) At the request of the owner or person in lawful possession or control of the private property, the sheriff of the county in which the vehicle is located or the city police of the city in which the vehicle is located may remove and hold it in the manner and upon the conditions provided in subsections (1) and (2)."

Section 6. Section 61-12-402, MCA, is amended to read:

"61-12-402. Notice to owner. (1) Within 72 hours after any vehicle is removed and held by or at the direction of the Montana highway patrol, the highway patrol shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition the Montana highway patrol shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number, and license number if available, any costs incurred to that date in the removal, ~~preservation~~ storage, and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff or the city police shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If such name and address are ascertained, the sheriff or the city police shall notify such owner and lienholder or person of the location of the vehicle.

(3) If the vehicle is registered in the office of the department, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid thereon, is mailed at

least 30 days before the vehicle is sold as hereinafter provided.

(4) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this part. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be ~~within the time requirements prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail~~ provided in the same manner as prescribed in 25-13-701(1)(b).

(5) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (2) through (4). The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or

person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

(6) A vehicle found by law enforcement officials to be a "junk vehicle" as defined by 75-10-501 and certified as having an appraised value of $100 or less as determined by the county assessor in accordance with the rules of the department of revenue may be directly submitted for disposal in accordance with the provisions of part 5 of chapter 10, Title 75, upon a release given by the sheriff or the city police. In the release the sheriff or the city police shall include a description of the vehicle including year, make, model, serial number, and license number if available. A release provided by the sheriff or the city police under this section shall be transmitted to the motor vehicle wrecking facility and shall be considered by that facility to meet the requirements for records under 75-10-512 and 75-10-513. Vehicles described in this section may be submitted without notice and without a required holding period."

Section 7. Section 61-12-403, MCA, is amended to read:

"61-12-403. Reclaiming vehicle. The owner, lienholder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the sheriff of the county or

the city police of the city in which the vehicle was located at the time it was taken into custody satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, ~~preservation~~ storage, and custody of the vehicle. He shall not be required to pay storage charges for a period longer than 90 days."

Section 8. Section 61-12-407, MCA, is amended to read:

"61-12-407. Transmitting return of sale and balance of proceeds. (1) When any vehicle is sold as provided in 61-12-404 the sheriff or the city police shall transmit to the department and to the county treasurer or to the city treasurer, respectively, a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, ~~preservation~~ storage, and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer or the city police shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, ~~preservation~~ storage, and custody of the vehicle.

(3) Upon receipt of the return of sale and such balance from:

(a) the county sheriff, the county treasurer shall

file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol; or

(b) the city police, the city treasurer shall file the return in his office and deposit the balance in the city street fund on all vehicles seized by the city police."

Section 9. Section 71-3-1203, MCA, is amended to read:

"71-3-1203. Enforcement of lien -- sale. If payment for such work, labor, feed, or services or material furnished is not made within 30 days after the performance or furnishing of the same, the person entitled to a lien under the provisions of this section may enforce said lien in the following manner:

(1) He shall deliver to the sheriff or a constable of the county in which the property is located a statement of the amount of his claim against said property, a description of the property, and the name of the owner thereof or of the person at whose request the work, labor, or services were performed or the materials furnished.

(2) Upon receipt of such statement, the sheriff or constable shall proceed to advertise and sell at public auction so much of the property covered by said lien as will satisfy same.

(3) Such sale shall be advertised, conducted, and held in the same manner as ~~provided--by--law-for-the-sale-of mortgaged-personal-property-by-sheriffs.-Such--notice--shall be--given--for-not-less-than-5-or-more-than-10-days-prior-to the-date-of-sale~~ prescribed in 25-13-701(1)(b).

(4) The proceeds of the sale shall be applied by the sheriff to the discharge of the lien and the cost of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or such part as is required to discharge the claims, shall be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against said property, and the balance of the proceeds shall be turned over to the owner of the property.

(5) However, before making seizure of any property under the provisions of this section, the sheriff may require an indemnity bond from the lienor ~~in~~ that may not to exceed double the amount of the claim against said property, said bond and the surety or sureties thereon to be approved by said sheriff."

NEW SECTION. Section 10. Security for sheriff's costs when property seized. If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of an order for claim and delivery shall provide a bond or other security to pay for all costs that may be incurred as a result of the service of such order.

NEW SECTION. Section 11. Codification instruction. Section 10 is intended to be codified as an integral part of Title 27, chapter 17, part 2, and the provisions of Title 27, chapter 17, part 2, apply to section 10.

NEW SECTION. Section 12. Coordination instruction. If this bill and Senate Bill No. 16, including the section of that bill amending 71-3-1203(3), are passed and approved, the amendment in Senate Bill No. 16 to 71-3-1203(3) is void.

NEW SECTION. Section 13. Effective date. Sections 1 and 2 and this section are effective July 1, 1987.

-End-

SB 56 INTRODUCED BY KEATING
REVISE COAL TAX BASED ON COAL TYPE AND PRODUCTION METHOD -- REPEAL "WINDOW"

1/06	INTRODUCED		
1/06	FISCAL NOTE REQUESTED		
1/06	REFERRED TO TAXATION		
1/12	FISCAL NOTE RECEIVED		
	NOT SIGNED BY SPONSOR		
1/13	SPONSOR FISCAL NOTE REQUESTED		
	DIED IN COMMITTEE		

SB 57 INTRODUCED BY HALLIGAN
REVISING CIVIL PROCESS AND SHERIFF PROCEDURES IN CIVIL MATTERS

1/06	INTRODUCED		
1/06	REFERRED TO JUDICIARY		
1/12	HEARING		
1/14	COMMITTEE REPORT--BILL PASSED AS AMENDED		
1/17	2ND READING PASSED	50	0
1/20	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/04	REFERRED TO JUDICIARY		
3/04	HEARING		
3/04	COMMITTEE REPORT--BILL CONCURRED		
3/06	2ND READING CONCURRED	81	2
3/07	3RD READING CONCURRED	88	1
	RETURNED TO SENATE		
3/11	SIGNED BY PRESIDENT		
3/12	SIGNED BY SPEAKER		
3/12	TRANSMITTED TO GOVERNOR		
3/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 88		
	SECTIONS 1, 2, 14 -- EFFECTIVE DATE: 7/01/8		
	SECTIONS 3-13 -- EFFECTIVE DATE: 10/01/8		

SB 58 INTRODUCED BY PINSONEAULT
JURY TO PICK ONE OF PROPOSED AWARDS OF PARTIES IN CIVIL ACTIONS

1/06	INTRODUCED		
1/06	REFERRED TO JUDICIARY		
1/14	HEARING		
1/27	COMMITTEE REPORT--BILL PASSED		
1/30	2ND READING PASSED	37	7
2/02	3RD READING PASSED	43	5
	TRANSMITTED TO HOUSE		
2/04	REFERRED TO JUDICIARY		
3/10	HEARING		
3/11	TABLED IN COMMITTEE		

SB 59 INTRODUCED BY GALT
ALLOW BANKS TO HOLD AGRICULTURAL LAND FOR 10 YEARS FOLLOWING FORECLOSURE
BY REQUEST OF JOINT INTERIM SUBCOMMITTEE ON AGRICULTURAL PROBLEMS

1/06	INTRODUCED
1/06	REFERRED TO JUDICIARY

through the counties and if so are we not duplicating services by passing this legislation. Steve Waldron responded by saying the state doesn't provide all what we need. He said there is no such thing as a "free lunch" because either the victim, the Crime Compensation Fund, or the state pays for services. He explained that some centers have up to an eight week waiting period to get services, and the law requires the centers not to deny anyone of services which are available. He said at some point there are not enough resources to fill the need, and this bill makes sure there is enough resources for at least one category of victims. The mental health center, he said, does charge a sliding scale fee to clients, but the centers can't give free services because it is to costly.

Senator Mazurek questioned how much of the 18% highway fines and the $130,000 federal money is spent by the program each year. Mr. Shaw replied in fiscal year 1986, $368,000 in state funds was allotted, and only $365,000 was spent. He said they did not spend any federal funds, because they did not finish using the state funds. Senator Mazurek questioned if that represented the 18% highway fine fund. Mr. Shaw answered it did not represent all of the fund. Senator Mazurek asked if they expanded the program, would they get to use the federal funds. Mr. Shaw said yes.

Senator Blaylock asked if the committee expanded the bill and used the state and federal funds, would the program still be short by $175,000. Mr. Shaw said by his estimates the program would be short.

Senator Halligan closed by saying Senator Beck had made a good point about duplicating services and if a program wants to pursue the sliding scale approach, they can and then be compensated later. He felt the committee could do what they pleased with the money amounts of compensation to the families for treatment. He told the committee the expansion of the bill to include sexual crime cases could cause a duplication of services because the "dependant neglect" statue states a child sexually abused is considered harm under the act, and is eligible for foster care, which puts the case under SRS and the treatment it gives. He felt homicides were the most dramatic of crimes, and the other crimes were under state funded programs already.

Senator Mazurek asked Senator Halligan to get statistics on how many sexually abused cases are outside the home, and how many are committed in the home. He felt it would be helpful to the committee.

CONSIDERATION OF SB 57: Senator Halligan turned the opening of SB 57 over to Kathy Good of Missoula, who represented Missoula County Sheriff's Office. She gave reasons for the changes in the procedures sheriffs take in civil matters (see Exhibit 1).

Section 1. It amends 7-4-2511 section to allow the completion of balancing and accounting procedures in the sheriff's office. She said this month, because of the holiday, they did not get their bank statement until the 8th of January, and it takes two days to go through bookkeeping process, so there is no way to get it to the treasure by the first Monday of the month.

Section 2. It amends 7-4-2512 section to be consistent with Section 1.

Section 3. It amends 25-13-404 section which changes time for return of a writ of execution from not less than 10 or more than 60 days after "its receipt" to the same time period after "receipt of the recovery by the sheriff following imposition of levy". She said that under the writ of execution the department has had several checks that have bounced including $5,000 worth in the last two weeks. She stated if it wasn't for the 10 day holding period, the department would have to go through bad check procedure because they would have already distributed those funds.

Section 4. It amends 25-13-701 which removes the requirement for sheriff's deputies to know township boundaries where property may be located. She felt it would modify the code. She said the Sheriff's deputies have jurisdiction in the county and with the amendment they would not have to know the township boundaries.

Section 5. It amends 61-12-401 which removes the sheriff's liability in the case of vandalism of or theft from abandoned vehicles in sheriff's custody after impoundment and before sale. She stated it would change the word "preservation" to "storage" to relieve the sheriff's liability. She pointed out that most sheriffs don't have enough funds to hire a security guard to protect the impounded vechical lot.

Section 6. It amends 61-12-402 which keeps the codes consistant with section 5 for the impounded vechicals for sale and the personal property under execution.

Section 9. It amends 71-3-1203 which is the same as section 6, she said, as far as notification of sales regarding agisters' liens.

Section 10. It is a new section which she explained requires the party requesting service of an order for claim and delivery of personal property to provide a bond or other security to pay for all costs which may be incurred as a result of the sheriff's service of such order.

PROPONENTS: None

OPPONENTS: None

DISCUSSION FROM THE COMMITTEE: Senator Beck asked if Kathy Good had checked with the treasure's office to see if the change in section 1 would complicate their books. Kathy Good replied there was no difficulty with the treasure's office.

Senator Mazurek asked if section 3 is eliminating the requirement of the sheriff having a given number of days to levy. Kathy Good felt it did not eliminate the requirement. She felt the 60 days deadline should apply to the return of the writ, and the money is not to be distributed on the same day it is received. She gave cases of distributing funds to undeserving people in less than 10 days, which means the funds are not available to people who do deserve the funds.

Senator Bishop said the sheriffs could sit on a writ conceivably for a year if we amend it like this.

Senator Mazurek said the researcher should look into this area.

Senator Bishop stated if a writ is returned with no response, then a lawyer might have to issue a second writ. Kathy Good said that happens right now.

Senator Halligan closed on SB 57.

The Montana High School Association representatives attended the committee hearing to answer questions on SB 23 which would expand the open meeting law. Mr. Dan Freund said he would answer any questions the committee had.

Senator Blaylock said he hoped MHSA would show for the rehearing when the people from Missoula can be represented and hear the MHSA's response. He asked why the board was meeting in Las Vegas with school tournament funds paying for it, and why was the board making decisions on students' cases in Las Vegas. Mr. Freund said he apologized for not being at the first meeting for SB 23. He answered the question by saying the board eliminated a June meeting four or five years ago because most members attended the National Federation of State High School Association meeting, which is held in the summer. This saved cost for the Association and in Las Vegas the members allotted time to take up issues that were of emergency standard. He stated the students' issues taken up at the meeting dealt with petitions for waivers of the "transfer rule". He said principals of Red Lodge and Missoula were aware of the board taking action because if the petitions were not approved, then the students would have the right to appeal on a much quicker date. If the board would have waited until the September meeting to make a decision, and the students were denied, they would have to appeal, which takes more time into an extra activity. He said if the students were approved,

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date Jan. 12th

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE Jan. 12, 1987
BILL NO. SB57

SUMMARY SB57

(Prepared by Senate Judiciary staff)

SB57 amends several section of existing law relating to sheriff's procedures in civil matters and adopts one new section allowing a sheriff to require security for costs incurred in the seizure of property under an order for claim and delivery.

Section 1. Amends 7-4-2511. Changes time requirements for paying fees into county treasury from the first Monday of each month to the 10th day in each month.

Section 2. Amends 7-4-2512. Same as section 1.

Section 3. Amends 25-13-404. Subsection (1) changes time for return of a writ of execution from not less than 10 or more than 60 days after "its receipt" to the same time period after "receipt of the recovery by the sheriff following imposition of levy". (Purpose = clarification.) New subsection (3) added to provide an alternative method for the return of a writ of execution. The new subsection allows return to the law firm from which the execution was received.

Section 4. Amends 25-13-701. In requirements of notice of sale of execution, changes publication of notice from "township or city" to "county". (Purpose = to remove the requirement for sheriff's deputies to know township boundaries where property may be located.)

Section 5. Amends 61-12-401. With regard to provisions relating to the taking of a vehicle into custody, changes the word "preservation" to "storage". (Purpose = To remove sheriff's liability in the case of vandalism of or theft from abandoned vehicles in sheriff's custody after impoundment and before sale.)

Section 6. Amends 61-12-402. Subsection (1) = same as section 5. Subsection (4),

SENATE JUDICIARY
EXHIBIT NO. 1
DATE Jan. 12, 1987
SUBJ NO. SB 57

page 8, line 15 and 16 makes notification requirements regarding impounded vehicles ~~the same~~ as those for sale of personal property under execution.

Section 7. Amends 61-12-403. Same as section 5.

Section 8. Amends 61-12-407. Same as section 5.

Section 9. Amends 71-3-1203. Regarding agisters' liens, makes notification requirements consistent with those for sale of personal property under execution.

Section 10. Creates new section to be codified in Title 27. chapter 17, part 2 relating to seizure of personal property . New section requires the party requesting service of an order for claim and delivery of personal property to provide a bond or other security to pay for all costs which may be incurred as a result of the sheriff's service of such order.

COMMENTS: None.

NAME: Kathy Good DATE: 1/12/97

ADDRESS: NW 5310 Teeper Dr. Florence MT 59833

PHONE: 721-5700, ext 325

REPRESENTING WHOM? Missoula County Sheriff

APPEARING ON WHICH PROPOSAL: SB 57

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: To modernize and provide consistency in Civil Process laws.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: T. Gregory Hertz / undersheriff DATE: 1-12-87

ADDRESS: 201 W. Pine Missoula, MT

PHONE: 721-5700 Ext. 306

REPRESENTING WHOM? Missoula Co. Sheriff Dept

APPEARING ON WHICH PROPOSAL: SB 57

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: To make revisions changes to specific Civil Service laws for Sheriffs in the State of Montana.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

her property and caused quite a bit of time delay on the road work. Senator Pinsoneault said the lady was probably there before the construction came in. Senator Halligan felt not too many county attorneys will go up against a big company that has public nuisance complaints against it. Senator Mazurek felt the county attorneys won't go through with what he could do for the complaintants. Senator Yellowtail felt that the passing of this bill would make the county attorneys take action. Senator Beck felt the law is already there and does not need to be changed, but the county attorneys are not working as hard as they could on these matters. Senator Pinsoneault said the county attorneys he talked to felt it would make it easier to charge and prosecute complaints. Senator Pinsoneault moved the amended bill to DO PASS. The motion carried.

Action on SB 57: Senator Mazurek gave an amendment to the committee on SB 57:

1. Title, line 6.
Following: "TREASURY"
Insert: "CLARIFYING THE TIME FOR EXECUTION AND RETURN OF A WRIT OF EXECUTION;"

2. Page 3.
Following: line 16
Insert: "Section 3. Section 25 13 402, MCA, is amended to read:
"25-13-402. How writ executed. The sheriff must execute the writ against the property of the judgment debtor no later than 60 days after reciept of the writ by levying on a sufficient amount of property, if there be sufficient, collecting of selling the things in action, and selling the other property and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff, he must levy only on such part of the property as the judgment debtor may indicate if the property indicated be amply sufficient to satisfy the judgment and costs."
Renumber: subsequent sections

He said it will make it clearer about the excuting of the writ against the property being no later than 60 days after the receipt of the writ. Senator Halligan moved the amendments and they carried unanimously. Senator Halligan moved the bill DO PASS. The motion carried.

The committee adjourned at 12:00 p.m.

Chairman

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date Jan. 13th

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman		X	
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	✓		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 13 19 87

MR. PRESIDENT

We, your committee on SENATE ~~BILL~~ JUDICIARY

having had under consideration SENATE BILL No. 57

first reading copy (white color)

Revising civil process and sheriff procedures in civil actions.

Respectfully report as follows: That SENATE BILL No. 57

BE AMENDED AS FOLLOWS:

1. Title, line 6.
Following: "TREASURY;"
Insert: "CLARIFYING THE TIME FOR EXECUTION AND RETURN OF A WRIT OF EXECUTION;"

2. Title, line 13.
Following: "7-4-2512,"
Insert: "25-13-402,"

3. Page 3.
Following: line 16
Insert: "Section 3. Section 25-13-402, MCA, is amended to read:
"25-13-402. How writ executed. The sheriff must execute the writ against the property of the judgment debtor no later than 60 days after receipt of the writ by levying on a sufficient amount of property, if there be sufficient, collecting or selling the things in action, and selling the other property and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff, he must levy only on such part of the property as the judgment debtor may indicate if the property indicated be amply sufficient to satisfy the judgment and costs."

Renumber: subsequent sections

~~DO PASS~~

~~DO NOT PASS~~

Chairman.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 4, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 4, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members present with the exception of Rep. Hannah.

SENATE BILL NO. 57: Senator Halligan, District No. 29, stated this bill came from the sheriff's office and he referred to Katherine J. Good to explain the bill.

PROPONENTS:

Katherine J. Good, from the Missoula County Sheriff's Department, testified this bill is presented to revise and update the civil process codes and regulations. The first section of the bill amends the deadline for paying sheriff fees to the county treasury from the first Monday of the month to the tenth day of the month. The third section relates to a writ of execution, and the service thereof, and specifies a 60 day return deadline. Section four relates to a writ of execution, also, which would allow the sheriff's office the option of returning a writ of execution to the officer, agent, or attorney directly to the court as is required under the codes now. The common practice, today, regarding the returned writ of execution and the one attorneys prefer, is that the sheriff's office is to make the dispursement of the recovery to them which is then easier to disperse funds and make the return to the same place. The attorneys would be responsible for returning the documents to the court. The current code does not allow this option. She explained section five changes the notice of sale posting requirements. She felt the word "township" should be changed to "county". Sections six, seven, eight, and nine amends the abandon vehicle codes to remove the preservation requirements and changes it to just a storage requirement, This code would also change the requirement for publication for the notice of sale for abandoned vehicles to one week prior to the sale. Section ten changes the lien publication requirement to be consistent with the sale of personal property under court order making the publication requirement one week before the sale. Section 11 is a new code that allows the department to request a security for costs under a claim and delivery order.

There were no further proponents and no opponents. There were no questions from the committee.

Senator Halligan closed the hearing on Senate Bill No. 57.

SENATE BILL NO. 49: Senator Thayer, District No. 19, Chief Sponsor, stated this bill comes from the joint interim subcommittee on liability issues and it basically is an act to abolish civil liability actions against officers, directors and volunteers of nonprofit corporations. He stated this does not apply to any willful or wanton misconduct. He explained nonprofit corporations means an organization exempt from taxation and qualify under section 501(c) of the Internal Revenue Code or corporations admitted under the Montana Nonprofit Corporation Act. The main reason this bill was being presented was that the cost for nonprofit corporations obtaining this kind of coverage was just prohibited and the availability is terribly hard to get. It has been very difficult to find people to serve on the boards because of the fact they do not want to be sued for their personal assets under the current situation.

PROPONENTS: Bill Leary, representing the Montana Hospital Association, supported this bill on behalf of the 500 hospital trustees who served the licensed hospitals in the state.

Chris Volinkaty, Lobbyist for the Developmentally Disabled People for the state of Montana, stated currently the developmentally disabled people are receiving community services from 56 nonprofit corporations who benefit greatly from this bill.

Lyle P. Nagel, President of the State of Montana Volunteer Firefighters Association, felt the bill was very important and urged support.

Jo Brunner, representing the Montana Water Association, stated the irrigation district and the water user facilities were either without liability for their officers or were paying such premiums as to be prohibitive. She submitted written testimony. (Exhibit A).

Lorna Frank, representing the Montana Farm Bureau, went on record in support of the bill.

Carol Mosher, representing the Montana Cattle Women and the Montana Stock Growers, supported the bill.

Bob Phfer, Vice President of the Montana Credit Union League, representing 108 of Montana's credit unions, stated the credit unions were nonprofit member owned and controlled

Kim Kradolfer, Assistant Attorney General for the state of Montana, submitted proposed amendments. (Exhibit A). She urged support of the bill with the proposed amendments.

No further proponents, no opponents and no questions.

Senator Blaylock closed the hearing on Senate Bill No. 144.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 57: Rep. Giacometto moved SB 57 Be Concurred In. Rep. Eudaily questioned the language on page 13, section 11, regarding where the money was coming from. Rep. Mercer stated it would be the party who was seeking execution. Rep. Eudaily wondered if there would be any costs the counties might have to incur. Rep. Hannah stated the requirements under the bill were statutory requirements and did it mean we now had to pay the sheriff to do those things in section 11. Rep. Mercer stated Rep. Hannah's understanding was fairly accurate. He stated currently, if the sheriff is asked to sell some property of someone you had a judgment against, the sheriff withheld from the proceeds whatever his costs were. The bill is saying, the sheriff is not sure if he would have enough proceeds from the sale to cover his costs and you have made the judgment to execute on the property so, he now wants a bond. The sheriff does not want to get stuck for the costs and this should eliminate the sheriff from ever getting stuck. Rep. Hannah felt this would also eliminate many of the smaller judgments from being acted upon because the sheriff would feel it was not worth it to him to collect it. Rep. Hannah moved to strike Section 11 from the bill. Rep. Darko felt the language used should be enough. Rep. Giacometto stated he felt Rep. Hannah was correct. Question was called and voice vote was taken on the original motion. Thirteen members voted in favor of the motion and two voted in opposition. The two voting in opposition were Rep. Eudaily and Rep. Hannah. SB 57 BE CONCURRED IN.

ACTION ON SENATE BILL NO. 256: Rep. Daily moved Be Concurred In. Question was called and a voice vote was taken. The motion carried unanimously. SB 257 BE CONCURRED IN.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 9:50 a.m.

Earl Lory

Earl Lory, Chairman

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 4, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

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STANDING COMMITTEE REPORT

MARCH 4, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report [redacted] NO. 57

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

THIRD reading copy (BLUE color)

VISITORS' REGISTER

JUDICIARY COMMITTEE

SENATE BILL NO. 57 DATE March 4, 1987

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
T. Gregory Hintz	Missoula Sheriff Dept	X	
Katherine J. Good	"	X	
Wm. H. Pumbley	Self		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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